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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

No. 178

WILLIAM J. STRATTON, SECRETARY OF STATE OF THE STATE OF ILLINOIS, APPELLANT,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, A CORPORATION, APPELLEE.

APPEAL FROM STATUTORY DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

SUPPLEMENTAL BRIEF OF APPELLANT ON FEDERAL AND EQUITY JURISDICTION

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PHILLIPS BROS.' PRINT SPRINGFIELD, ILLINOIS.

(71345—75)

SUBJECT INDEX.

		Page
I.	Jurisdiction of amount involved	3
II.	Jurisdiction of civil rights	4
III.	Jurisdiction as court of equity	5

AUTHORITIES CITED.

Bank of Arizona v. Howe, 293 Fed., 600 3

Berryman v. Whitman College, 222 U. S., 334 8

Citizens Bank v. Cannon, 164 U. S., 319 ..... 3, 6

Clay Center v. Farmers Loan Co., 145 U. S., 224 4

Eachus v. Hartwell, 112 Fed., 564 3

First National Bank v. Louisiana Highway Commission, 264 U. S., 308 7

General Corporation Act, Smith-Hurd's Ill. Rev. Stat., Chap. 32, Secs. 110-128 4

Holt v. Indiana Mfg. Co., 176 U. S., 68 ..... 3, 4, 6, 11

Judicial Code, Section 24, Subdivision 1 ..... 3, 5

Lineham Ry. Tr. Co. v. Tendergrass, 70 Fed. 1 3

New England Mtg. Co. v. Gay, 145 U. S., 123 4

Purnell v. Page, 128 Fed., 496 3

Taylor v. Beckham, 178 U. S., 548 5

Turner v. Jackson Lumber Co., 159 Fed., 923, 926 3

Walton v. House of Representatives, 265 U. S., 487 5

White v. Berry, 171 U. S., 366 5

$3000, exclusive of interest and costs, the suit being of a civil nature in equity, under supervision 1 (a), Section 4 of the Judicial Code; and also, under subdivision 14 of Section 4 of the Judicial Code (R. 4). Section 4 of the Judicial Code does not appear to be applicable, but apparently it was intended to refer to Section 24 of the Judicial Code, which contains the provisions mentioned.

In support of its statement as to the amount, appellee alleged the suit involved its right and authority to do business in Illinois, and that the value of such right exceeds $3,000, in that appellant sought to require it to pay a franchise tax in the sum of $1,000, together with a penalty of 5% per month after August 1, 1927, and that the value of such business and penalties would exceed the sum of $3,000, and that to revoke its authority to do business in Illinois would damage it in the sum of $5,000 or more. (R. 10-11.)

The bill does not state any facts in regard to the local business of appellee in Illinois, except that such business during the preceding year amounted to the sum of $2868.36 (R.6-7). Nothing is shown as to future local business, or as to any interference with such business in that State.

No question has been raised as to the right of appellee to transact a local business in Illinois, or with respect to its right to carry on interstate commerce in that State. The sole question is in regard to the amount of the annual franchise tax which should be paid by it for the privilege of doing a local business in the State for the year commencing July 1, 1927.

BRIEF OF ARGUMENT.

I.

The bill fails to show that the District Court had jurisdiction of the amount involved in this case.

(a). The amount in controversy in this case is the difference between the sum of $1,000 assessed as a franchise tax against appellant, and the sum of $135.21 admitted by it to be due. Such difference in amount is not sufficient to give jurisdiction to the District Court.

Bill of Complaint, Record 3-13;
Judicial Code, Sec. 24, Subdivision 1.

(b). A suit to restrain the collection of a tax which does not exceed the statutory limit, is not within the jurisdiction of the District Court, and future taxes which may be assessed cannot be considered in determining the amount in dispute in such a case.

Holt v. *Indiana Mfg. Co.*, 176 U. S., 68;
Citizens Bank v. *Cannon*, 164 U. S., 319;
Bank of Arizona v. *Howe*, 293 Fed., 600.

(c). In a suit to enjoin the collection of a tax, the amount in controversy is the amount of the tax involved.

Turner v. *Jackson Lumber Co.*, 159 Fed., 923, 926;
Purnell v. *Page*, 128 Fed., 496;
Eachus v. *Hartwell*, 112 Fed., 564;
Lineham Ry. Tr. Co. v. *Tendergrass*, 70 Fed., 1.

(d). The alleged penalties and damage which might result by reason of the failure of appellee to pay the tax assessed are not involved in the controversy with respect to the amount of tax which should be paid, and therefore cannot be considered in determining the question of jurisdiction.

General Corporation Act, Smith-Hurd's Ill. Rev. Stats, Chap. 32, Secs. 110-128;

New England Mtg. Co. v. *Gay*, 145 U. S. 123;

Clay Center v. *Farmers Loan Co.*, 145 U. S. 224.

(e). The right of appellee to do business in Illinois is not in controversy in this case, and there is no question as to its right to carry on interstate commerce in that State. The value of such business or of its property in the State is therefore not involved in this suit.

Bill of Complaint, Record 3-13.

II.

This suit does not involve any right, privilege or immunity secured by the Federal Constitution.

Neither the statute nor the tax imposed would deprive appellee of any right, privilege or immunity secured by the Federal Constitution, which might be invoked as a ground for jurisdiction of the District Court.

Bill of Complaint, Record 3-13.

Holt v. *Indiana Mfg. Co.*, 176 U. S. 68, 72.

III.

The District Court does not appear to have jurisdiction in this case as a court of equity.

(a). The jurisdiction of the District Court in equity is limited to the protection of property rights, where there is no adequate remedy at law.

Bill of Complaint, Record 3-13;
Judicial Code, Section 24, Subdivision 1;
Walton v. *House of Representatives,* 265 U. S., 487;
White v. *Berry,* 171 U. S., 366;
Taylor v. *Beckham,* 178 U. S., 548.

ARGUMENT.

I.

The amount involved in this case was not sufficient to confer jurisdiction on the District Court.

The amount involved in this case is the difference between the tax assessed and the sum admitted by appellee to be due, which difference amounted to the sum of $864.79. The amount therefore did not exceed the sum of $3,000 required to confer jurisdiction on the District Court.

This Court held in the case of *Holt* v. *Indiana Mfg. Co.*, 176 U. S., 68, that a suit to restrain the collection of a tax, which does not exceed the statutory limit, though arising under the Constitution or laws of the United States, is not within the jurisdiction of a Federal Court. The Court also held that future taxes which may be assessed cannot be included in determining the amount in dispute.

In the case of *Citizens Bank* v. *Cannon*, 164 U. S., 319, this Court also held that under a bill to enjoin the collection of taxes for a series of years, where the evidence shows only the amount of the assessment for one year, which was below the jurisdictional amount, it could not be assumed that the assessment for each of the other years was for a like amount, in order to confer jurisdiction on a Federal Court. Those decisions are directly applicable to the present case.

In conformity with these decisions, the lower Federal Courts have frequently held that in a suit to enjoin the collection of a tax, the amount in controversy is the amount of the tax in question. The penalties or damages which may accrue by reason of a failure to pay the tax, like costs and interest on the amount involved, cannot be considered in determining the amount in controversy. (Brief I, (c).)

The bill shows that there is a controversy only as to the amount of the tax which may be lawfully assessed. The penalties which may accrue are only incidental to the failure to pay the tax assessed and might have been avoided by the payment of such tax, the same as interest and costs which might accrue upon an amount in dispute.

The bill fails to show that there is any question as to the right or authority of appellee to do a local business in Illinois, or to carry on interstate commerce in that state. On the contrary, it clearly appears from the bill that no such rights were involved, but that only the amount of the tax which may be legally assessed is in dispute.

The authorities cited by appellee to sustain the jurisdiction are therefore not in point. The decisions cited are all cases in which the right to do business was involved or there was a direct interference with such business, either local or interstate, and that the amount of such business or value of rights involved exceeded the sum of $3,000.

The case of *First National Bank of Columbus* v. *Louisiana Highway Commission,* 264 U. S., 308, referred to

by appellee, holds contrary to its contention on this point. The Court there stated, at page 310, that the mere assertion that more than the required amount is involved is not enough, where, as in that case, the facts alleged do not even tend to support the claim. This statement is directly applicable to the facts stated by the bill in the present case.

The only case cited by appellee in which the question of a tax was involved which was less than the amount required, is *Berryman* v. *Whitman College,* 222 U. S., 334. The Court sustained the jurisdiction in that case, however, on the ground that the imposition of the tax impaired the obligation of a legislative contract with the college, and thus distinguished it from cases in which no such rights were involved, such as the present case.

If the argument of appellee should prevail, then every franchise tax or any other kind of tax, no matter how small in amount, which might be assessed or levied with respect to property or business exceeding the value of $3,000, would be sufficient to confer jurisdiction on the District Courts. In that view, the Federal Courts, including this Court, would be required to take cognizance of all such cases, no matter how trivial in amount the tax involved might be, contrary to the purpose and intent of Congress in limiting the jurisdiction of the District Courts to cases in which the amount in controversy exceeds $3,000.

II.

This suit does not involve any right, privilege or immunity secured by the Federal Constitution.

The bill also sought to give jurisdiction to the District Court by alleging that the suit was brought to redress the deprivation of rights, privileges and immunities secured to appellee by the Federal Constitution.

As stated by this Court in *Holt* v. *Indiana Mfg. Co.*, 176 U. S., 68, at page 72, this provision refers to civil rights only, and was therefore not applicable to the tax assessed in that case. So in the present case, the tax here assessed does not involve any civil rights of a personal character, and therefore the constitutional provision referred to is not applicable.

Appellee has not discussed this provision in the brief presented by it in support of the jurisdiction, and therefore appears to have abandoned it as a ground for jurisdiction of the District Court in this case.

III.

The District Court does not appear to have jurisdiction in this case as a court of equity.

The jurisdiction of the District Court in equity is limited to the protection of property rights, where there is no adequate remedy at law. If an action at law had been brought against appellee to collect the tax, it might have defended on the ground that the statute was invalid, and if successful would have been relieved from payment of the tax assessed.

It does not appear from the bill that any action was taken against appellee for the purpose of forfeiting its right to do business in the State, either local or interstate, or to enforce any penalty whatever. The situation does not seem to have required the District Court to assume jurisdiction of the suit as a court of equity in order to protect appellee in any matter in which it had no remedy at law.

Respectfully submitted,

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Counsel for Appellant.

BAYARD LACEY CATRON,
Assistant Attorney General,
Of Counsel for Appellant.

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APPEAL FROM STATUTORY DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

SUPPLEMENTAL BRIEF OF APPELLANT ON FEDERAL AND EQUITY JURISDICTION

MAY IT PLEASE THE COURT:

Appellee filed its bill in equity herein to enjoin the Secretary of State of Illinois from collecting a franchise tax in the amount of $1000 assessed against it for the privilege of doing a local business in that State during the year commencing July 1, 1927 (R. 3-13).

Federal equity jurisdiction of this suit was invoked by appellee in its bill on the ground of diversity of citizenship and that the amount in controversy exceeded the sum of

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WILLIAM J. STRATTON, Secretary of the State of Illinois,
Appellant,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation,
Appellee.

Appeal from Statutory District Court of the United States for the Southern District of Illinois, Southern Division.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEE.

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INDEX.

Page

Statement of the case 1

Contentions of appellee 10

Summary of argument 11

Argument 16

I. The minimum tax fixed by the Illinois statute is not a fee required to be paid by appellant to the State of Illinois in exchange for the privilege of admission into the state and doing business therein, but is an annual excise tax laid on such privilege.. 16

II. The tax here involved is, as to appellee, void, inasmuch as it burdens interstate commerce and deprives appellant of property without due process of law ..... 2[illegible]

III. The tax here involved is, as to appellee, void, inasmuch as the tax and the statute, pursuant to which it is laid, discriminate against appellee and in favor of other corporations, both foreign and domestic, in violation of the equal-protection clause.. 34

Appendix—Sections from Chapter 32, Cahill's Revised Statutes 1927 (Chapter 32, Smith-Hurd Revised Statutes 1927) 39

Authorities Cited.

Air-Way Electric Co. v. Day, 266 U. S. 71 .....3, 11, 13, 14, 15, 27, 32, 37

Alpha Portland Cement Co. v. Mass., 268 U. S. 212, 218 .....12, 26, 27

A. T. & S. F. Ry. v. O'Connor, 223 U. S. 280..... 23
Baltic Ming. Co. v. Mass., 231 U. S. 68..... 23
Cahill's Ill. Rev. Statutes 1927, Chap. 111a, Par. 71.. 15
Cahill's Revised Statutes 1927, Chapter 32 (Chapter 32, Smith-Hurd Revised Statutes 1927):

Section 80 39
Section 81 39
Section 92 41
Section 94 42
Section 96 43
Section 101 43
Section 102 45
Section 105 46
Section 106 48
Section 107 48
Section 108 49
Section 109 49
Section 112 49
Section 113 50
Section 114 50
Section 115 51
Section 116 51
Section 126 52
Section 128 53
Section 129 53
Section 130 54

Cheney Bros. v. Mass., 246 U. S. 147..... 24
Cudahy Packing Co. v. Hinkle, 278 U. S. 460.....11, 21, 29
Egyptian Transportation System v. Louisville & Nashville R. R., 321 Ill. 580..... 15
Frost v. R. R. Comm., 271 U. S. 591, at 593-4, 599.... 14
General Corporation Act, Chap. 32, Secs. 101, 105 and 107 11

General Ry. Signal Co. v. Va., 246 U. S. 500.....12, 33
Hanover Ins. Co. v. Harding (Carr), 272 U. S. 494 .....12, 14, 18, 19
Illinois Power & Light Corp. v.. Illinois Commerce Commission, 320 Ill. 427..... 15
International Paper Co. v. Mass., 246 U. S. 135.....11, 32
K. C., Ft. Scott & M. R. R. v. Kansas ex rel. Botkin, 240 U. S. 227.....13, 24, 25
K. C. M. & B. R. R. v. Stiles, 242 U. S. 111.....13, 24
Latrobe v. N. Y., 279 U. S. 421.....12, 19
Looney v. Crane Co., 245 U. S. 178.....11, 14, 25
Ludwig v. Western Union Tel. Co., 216 U. S. 146...11, 23
O'Gara Coal Co. v. Emmerson, 326 Ill. 18.....3, 13, 14, 15
Ozark Pipe Line Corp. v. Monier, 266 U. S. 561, 565..12, 26
People of State of New York v. Latrobe, 279 U. S. 421 .....12, 33
Pullman Co. v. Kansas, 216 U. S. 56, Op. 63-4..... 14
Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50 .....12, 13, 15, 19, 24
Royster Guano Co. v. Virginia, 253 U. S. 412..... 14
Smith-Hurd Statutes 1927, Chap. 111⅔, Par. 56..... 15
Southern Ry. Co. v. Greene, 216 U. S. 400, 418..... 14
Western Union Tel. Co. v. Kansas, 216 U. S. 1 .....11, 14, 22, 23, 32

No. 178.

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Appellee.

Appeal from Statutory District Court of the United States for the Southern District of Illinois, Southern Division.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEE.

STATEMENT OF CASE.

May It Please the Court:

Appellee is a corporation organized and existing under the laws of the State of Missouri. On October 19, 1903, it was "duly authorized to do business in the State of

Illinois, for a term of eighty-eight (88) years'' and became ''entitled to all the rights and privileges granted to foreign corporations under the laws of this state'' (Illinois). The amount of its capital at the time ''represented in the State of Illinois is $50,000.00'' (Rec., pp. 5 and 14).

At the time of its admission, appellee's authorized stock was $55,000,000.00.

Appellee afterwards increased its authorized capital stock to $130,000,000.00. As is usual, the amount of stock represented from year to year in Illinois fluctuated. At one time as much as $5,500,000.00 of its authorized capital stock was represented in Illinois. This was the equivalent to $1,533,324.23 of appellee's issued capital stock. It is charged in the bill of complaint that appellee had never paid an initial or admission fee in the State of Illinois on more than $5,500,000.00 of its authorized capital stock (Rec., p. 6), which represented the admission into Illinois of not over $1,533,324.43 of its issued capital stock.

At the time the appellee was admitted to do business in Illinois, no franchise tax was exacted by that state of any corporation. The only fees required to be paid to the state were upon the incorporation of domestic corporations and the admission of foreign corporations. Incorporation or initial fees from domestic corporations and the admission fees from foreign corporations were paid but once.

Prior to 1919, the State of Illinois required neither for-

eign nor domestic corporations to pay annual franchise taxes. In that year there was a general revision of the Corporation Act (Illinois Laws 1919, pp. 316-350), requiring franchise taxes based on authorized capital. Eight years later such franchise tax provisions were held invalid in the case of O'Gara Coal Co. v. Emmerson, 326 Ill. 18, which followed Air-way Electric Appliance Company v. Day, 266 U. S. 71. The Illinois Legislature immediately amended the statute (Laws 1927, pp. 359 to 360). This case involves such statute, as amended.

Appellant correctly sets forth Sections 105-107 of the Illinois Corporation Act and the method of the appellant used in calculating the tax claimed to be due from appellee. It should be noted, however, that the appellee was and is willing to pay a tax, based on that portion of its issued capital stock represented by property owned and business done in Illinois, in the manner provided by section 105. On such a basis, $270,420.00 of its issued capital being represented in Illinois, appellee would owe a tax of $132.21. In its bill of complaint, appellee offers to pay such amount (Rec., pp. 7-8), but appellant refused to accept such amount, insisting that under the proviso of section 105, appellee was lawfully required to pay in accordance with the scale of minimums of section 107. The validity of such scale of minimums, as sought to be applied to it, is challenged by appellee.

Throughout his brief, appellant treats the tax here involved as a price required to be paid by appellee for the